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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,719	06/19/2002	Takako Fujii	M2096-4	5004
7278	7590	11/15/2005		
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257				
EXAMINER WIEKER, AMANDA FLYNN				
ART UNIT		PAPER NUMBER		

3743

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/088,719	FUJII ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Amanda F. Wiekert	3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 17 October 2005.

2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1, 2, 7-9, 13, 14 and 25-42 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1, 2, 7-9, 13, 14 and 25-42 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All    b) ☐ Some \*    c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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**DETAILED ACTION**

*Claim Rejections - 35 USC § 101*

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-2, 7-9, 13-14 and 25-42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims reciting a portion of, or an attachment to, the human body contain non-statutory subject matter. 1077 OG 24 (April 21, 1987). "A claim directed to or including within its scope a human being will not be considered to be patentable subject matter under 35 U.S.C. 101".

Accordingly, where a claim is directed to an apparatus "attached to" the human body or any part thereof, such a claim will be rejected under 35 U.S.C. 101, because the claim positively recites a part of the human body and therefore is directed to non-statutory subject matter.

While Applicant has corrected many instances of claimed non-statutory subject matter, several instances remain. The examiner has identified an exemplary instance but Applicant is required to find and correct all instances of claimed non-statutory subject matter.

Claims 1-2, 7-9, 13-14 and 25-42 recite an apparatus that is attached to a part of the human body. For example, in claim 1 Applicant recites (line 7) "back side of the garment corresponding to any region from os sacrum to vertebrae lumbalis". Claims reciting a portion of, or an attachment to, the human body contains non-statutory subject matter. Identical problems occur throughout the claims and should be carefully identified and corrected by Applicant.

Applicant can overcome this rejection by amending claim 1 to recite, "back side of the garment adapted to correspond ~~corresponding~~ to any region from os sacrum to vertebrae lumbalis", and making similar amendments to the remaining claims.

*Claim Rejections - 35 USC § 102*

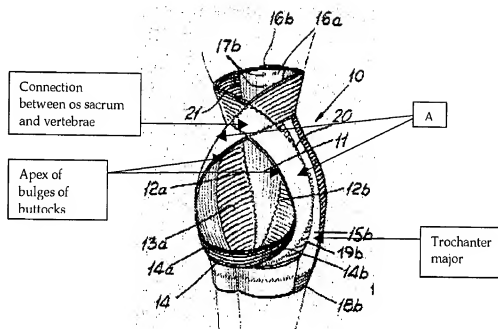
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 3,756,247 to Hand.

Hand discloses a garment (10) comprising a stretch fabric wherein the garment covers at least a part of the lower body of a wearer, has a crotch part, and is worn by being fitted to the wearer's body, wherein: the garment in part has a portion with a strong straining force (14); the portion with a strong straining force is a strong straining portion (A); right and left parts of the portion (A) are connected at a position on the back side of the garment corresponding to any region from os sacrum to vertebrae lumbalis of the wearer's body (see figure below); and at least part of the portion (A) covers a region extending from said position through the apex of bulges of each buttock in the direction of muscle fibers of musculus gluteus maximus to at least the vicinity of trochanter major. In alternate terms, the portion extends over the highest point of each buttock.



*Response to Arguments*

5. Applicant's arguments filed 17 October 2005 have been fully considered but they are not persuasive.
6. Again, it is noted that while the allowability of claims 2, 7-9, 13-14 and 25-41 is withdrawn in view of the newly applied rejection under 35 U.S.C 101, the allowability of these claims based on prior art remains unchanged.
7. Applicant argues that the amended claims overcome the Hand reference by reciting that the strong portion of the garment extends through "the apex" of bulges of each buttock, or through "the highest point of the bulge". Applicant contends that a "reasonable" interpretation of the term "apex" does not include "the peripheral region of the bulge including any region above the bulge".

The examiner disagrees. As seen in the Merriam-Webster OnLine Dictionary, the primary definition of an apex is: "the uppermost point". Clearly, as shown in the Hand figures,

the strong straining portion of the garment travels through the uppermost point of the bulge of the buttock, i.e., the apex.

It is noted that the examiner does not equate the region "above" the bulge of the buttock with the apex, as implied by Applicant's arguments, but rather asserts that the strong straining portion covers the uppermost portion of the bulge of the buttock. The examiner maintains that a reasonable interpretation of the term "apex" would include the uppermost portion of the bulge of buttock, which is the region covered by the Hand garment.

*Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

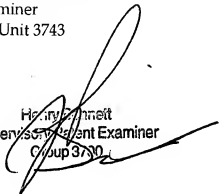
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
afw

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